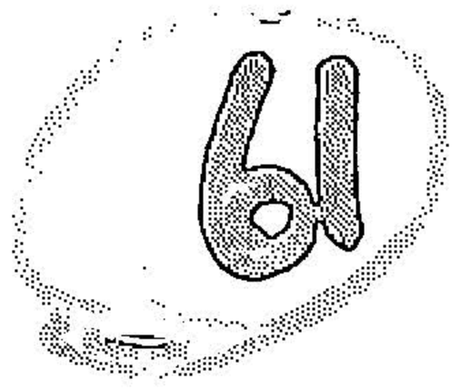
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PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Disputes.—Industrial Disputes between the Workmen and the Management of M/s. Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore-2.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(i) Letter No. 436/68-69, dated 9th July 1968 from Sri M. K. Srinivasa Iyengar Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT. BANGALORE.

Dated this 9th day of July 1968.

Reference

No. 48 of 1967.

Present :

Sri M. K. SRINIVASA Iyengar, B. SC. LL.B., *Presiding Officer.*

Smt. Muniyamma and Smt. Lakshmi, represented by Sri K. Subba Rao, Vice-President, The Binny Mills Employees Union, Bangalore.

... *I Party.*

Vs.

The Management of M/s Bangalore Wollen. Cotton and Silk Mills Co., Ltd., Bangalore-2.

... *II Party.*

Reference.

G. O. No. LMA 370 LLD 67, dated 20th June 1967)

AWARD

The services of two workers who were employed by the Bangalore Woollen, Cotton and Silk Mills Co., Ltd', with effect from 11th May 1965 and 12th May 1965 as menders in the Grey Ware House Section were terminated by a notice purporting to be under Standing Order No. 12 (ii) of the Mills with effect from 23rd May 1966 giving them a week's notice. They having raised a dispute before the Conciliation Officer the remarks of the management were called for. The conciliation proceedings failed and therenpon a report was made to the Government of the existence of a dispute of the individual workers under Section 2A of the Industrial Disputes Act with the Management. The Government by its Order No. LMA 370 LLD 67, dated 20th June 1967 has referred the following dispute for adjudication to this court:—

"1. Is the Management of Bangalore Woollen Cotton and Silk Mills Co.. Ltd., Agraharam Road, Bangalore–23 justified in terminating the services of Smt. Muniyamma and Smt. Lakshmi with effect from 23rd May 1966?

2. Are the above two workers entitled to reinstatement with back wages and continuity of service or to any other relief?"

The two workers (1st Party) were represented by Sri K Subba Rao, Advocate and the Management (II Party) by Sri B. T. Sampath.

2. In the statement filed by the I Party it has been averred that they had put in more than one year of service and they had worked satisfactorily and the termination of their services under Standing Order 12 (ii) was illegal and *mala fide*. It is contended that if at all the termination could have been under Standing Order 12 (i) with notice of one month or wages of one month in lieu of notice and these conditions having not been fulfilled the termination is illegal being contrary to the standing orders. It is contended that their service was terminated on the ground that they were "unsuitable" for confirmation and this amounts to a charge of misconduct and the management had not issued any show cause notice or held any enquiry and in those circumstances the termination is illegal They have prayed that the orders of termination be set aside and to direct the II party to reinstate them with continuity of service and their wages from 23rd May 1966.

3. The case for the II Party is that these two workers were temporary workers engaged in a specialised type of work which had been taken on hand as an experimental measure. About 19 girl menders were recruited between 11th May 1965 and 15th May 1965 all of them being temporary. Their work was being supervised by the supervisor in charge of the Section and others. By about May 1966 there was an idea of having the experimental measure on a permanent basis and to absorb such of them whose work was satisfactory. On a report being submitted by the Ware House Master that the work of six girl menders was not satisfactory a decision was taken to terminate their services by the Manager and order of termination were prepared on 3rd May 1966 but as the Manager had given directions to the Personnel Officer to have a confirmation about their work from the Ware House Master before issuing the orders and as the Ware House Master was on leave, the issue of the orders was postponed. After his arrival on or about the 13th May he confirmed his opinion and thereupon the orders were issued with effect from 23rd May 1966. In view of the absence of the Ware House Officer accommodation was sent to the workers informing that they were temporary workers and their services would be extended upto 5th June 1966 upto which the work was expected to last or until the work was completed whichever was earlier unless extended in writing by the Company or terminated at an earlier date under the terms of the Company's Standing Orders. Subsequently it was noticed that the period of service of the two workers was a little over one year and accordingly they would be entitled to one month's wages in lieu of notice. Therefore money orders for the amount due to be paid to them in this behalf were sent to them but they were returned on their refusal to accept. However later Muniyamma one of the aggrieved worker came to the Mills and took the money and acknowledged receipt in full satisfaction of all her claims in respect of wages in lieu of notice. It is submitted that the action taken by the management is *bona fide* and the claim of the I Party is untenable.

4. On the basis of the pleadings the following issues have been raised:—

1. Does the I Party prove that the order passed by the II Party discharging the two aggrieved workers under Standing Order No. 12 (ii) is *mala fide* and is only colourable exercise of the right thereunder?
2. Were the aggrieved workers temporary employees or permanent employees?

3. Is the Order discharging the two workers, punitive in nature?
4. Are the aggrieved workers entitled to reinstatement or any other relief?
5 What Award?

Only Lakshmi one of the aggrieved workers has been examined for the I Party. On behalf of the II Party two witnesses have been examined being the personnel Officer who issued the Order of termination and the Were House Master.

5. The order of appointment in regard to Lakshmi is Ex. M. 2. She admitted this during the course of her evidence. The order of appointment with reference to Muniyamma (Ex. M. 1) has been spoken to by the Personnel Officer. Both these indicate that their appointment was temporary. Ex. W. 5 which is a notice dated 5th May 1966 confirms that Lakshmi was a temporary worker and the work she was engaged in was of a temporary kind. A duplicate of Ex W. 5 which has been marked as Ex. M 3 contains the signature of Lakshmi and she has admitted her signature in it. She has also stated that Muniyamma had received a similar notice. The Notice issued to Muniyamma is not produced by the I Party but the duplicate of it containing her signature is spoken to by the Personnel Officer and has been marked as Ex. M. 7. The evidence of C. V. Narayana Rao" the Personnel Officer is that Mr. Greenwood the Mill Manager thought of making the mending by girl menders a permanent feature by about the end of April 1966 and it was made permanent only in June 1966 He stated that there must be correspondence in the Head Office showing that it was made permanent only in June However he also stated that the girls were given permanent tokens only in June, and therefore he could say that it was made permanent only in June. Therefore it appears that this work for which the I Party had been engaged was on a temporary basis until June 1966. Merely because subsequent to the discharge of the I Party workers, the work was taken on a permanent basis, it cannot be said that the aggrieved workers were permanent workers.

6. It has however urged by Sri. Subba Rao that according to the "classification of employees" under the Standing Orders of the Company the aggrieved workers could not be termed 'Temporary employees". He contended that under the standing orders a temporary employee would have to be treated as a permanent employee if he had put in a continuous service of 12 months. Standing Order 3 (a) and (b) define permanent employee

and temporary employee. Permanent employee is defined as one whose permanent employment has been confirmed by the Manager and who has been given permanent ticket and or whose name has been entered on the Muster Roll of permanent employees. A temporary employee is defined as one who has been engaged for work which is essentially of a temporary nature likely to be finished within a limited period. To this definition there is a proviso to the effect "provided that a temporary employee will be treated as a permanent employee if he has completed a satisfactory continuous service of 12 months without breaks (*i.e.*, without his name having been removed from the muster roll of temporary employees) in the normal manufacturing work of the Mills". One of the requirements for treating a temporary employee as permanent is that he must have completed a *satisfactory* continuous service of 12 months. and not a mere service of 12 months Though in the examination-in-chief Lakshmi stated that it was not correct to say that her work was not satisfactory or that the Ware House Master and Supervisor were cautioning her regarding her unsatisfactory work and even orally no one complained about her work and that of Muniyamma, during cross-examination it was elicited that on 8th October 1965 Sri. Veeraraghative (the ware house master) inspected her work and told her and five or six others that the work was bad. She also stated that time and again he used to call the workers and say that the work was not good but could not say who the particular persons were that were complained against. She could not recollect whether on 11th February 1966 he again advised her about her bad work but stated that he used tell all the workmen that as the material was meant for export, the work had to be done properly and could not remember the particular days when he said so Under these circumstances it cannot be said that the I Party workers fulfilled the requirement of satisfactory continuous service of 12 months and cannot be considered as permanent employees. I therefore hold on issue No. 2 that the aggrieved workers were temporary employees and not permanent employees.

7. It has been contended that the order of discharge of the workers is punitive in nature. The basis for this contention is that in the order of termination a reason has been mentioned *viz.*, "unsuitable for confirmation". It is urged that this costs an aspertion on the employees about their work and is therefore punitive in nature. In the statement filed by the I Party it had been stated that the termination was on charge of misconduct. During the course of arguments Sri Subba Rao submitted that

under Standing Order No. 13 (12) Habitual Negligence in work and neglect of work amount to misconduct and in view of the evidence adduced by the II Party that the work of the two workers was unsatisfactory, the termination of their services was clearly for a misconduct, coming within the scope of standing order No 13 (12) and therefore must be held to be punitive. The evidence to the effect that the work was found unsatisfactory does not, in my opinion, amount to the levelling of a charge of habitual negligence in work or neglect of work. The connotation of habitual negligence in work or neglect of work is quite distinct from a mere unsatisfactory work turned out which may be due to various reasons, other than negligence. The order of termination purports to be under Standing Order 12 (ii) and merely because a reason is mentioned, it cannot be said to be for a misconduct as is specified in Standing Order No. 13 (12) or construed as such. The use of the expression "unsuitable for confirmation" has been explained by Sri Narayana Rao (M. W. I.) to be in the context of the Management desiring to make the particular type of mending work a permanent feature and finding out who were suitable for being taken in and who were not. It is seen that similar action was taken in regard to four other workers besides the two workers concerned in this Case. The explanation that in the particular context of the mending work being made permanent, the Management considered who could be retained and who may not be retained and took action accordingly is acceptable. The evidence of Sri Veeraraghavan is that on certain occasions he had noticed the unsatisfactory work and warned or cautioned the workers. But it is of some significance that the Management did not decide to take any action for any misconduct as such in consequence of that. It appears that the Management entertained no idea of punishing the workers or taking any action with a view to inflict any punishment. The reason assigned for the termination is not such as to involve a ground of misconduct or such as to construe the termination as one being in the nature of a punishment. I therefore hold that the discharging of the two workers was not punitive in nature on issue No. 3.

8. It is urged by Sri Subba Rao for the I Party that the order of discharge under Standing Order 12 (ii) was *mala fide* and was a colourable exercise of the power thereunder. This aspect of the matter is covered by Issue No. 1. The order of termination was served on the workers on 16th May 1966 and their services were to terminate expiring on the close of 23rd May 1966 and by the date on which the orders were served one year had elapsed

from the date of their entry into service. It is now admitted by the II Party that in view of the period of service exceeding one year they were entitled to be paid one month's wages in lieu of notice as provided in standing order 12 (i). According to the II Party, such amount was sent by money-order but was refused by the workers. However Muniyamma accepted the amount subsequently. The acknowledgment given by her is Ex. M. 10 and this is spoken by Narayana Rao (M. W. 1.) Muniyamma has not appeared to give any evidence. While stating that if at all the termination could have been under Standing Order 12 (i) by issuing a notice of one month or wages of one month in lieu of notice, it is contended by Sri Subba Rao that the termination under Standing Order 12 (ii) is illegal and the requirement of Standing Order 12 (i) is not fulfilled as the payment of wages of one month in lieu of notice was not given at the time of termination and therefore the termination is illegal. In view of the fact that the workers' service exceeded one year the motion of Standing Order 12 (ii) in the notice of termination was not appropriate. However it is contended for the II Party that the notice of termination had been got ready by 3rd May 1966 but as the Ware House Master was on leave and the Manager had directed the personnel officer to obtain confirmation of the ware House Master the matter had to be postponed and in the meantime a notice that their service would be extended up to 5th June 1966 upto which the work was expected to last or until the work was completed which ever was earlier or terminated at an earlier date under the standing orders was issued as per Ex. M. 3 and M. 7 and soon after the Were House Master returned and confirmed his opinion the orders of termination were issued to the effective at the close of 23rd May 1966 after changing the date. That this was the process adopted is clear from the evidence of Narayana Rao and Veeraraghavan and from the fact that the notice of termination Ex. W. 1 and W. 6 bear the date 3rd May 1966 and the duplicates of the same in Ex. M. 6 clearly indicate that the original date at the close of which the termination had to take effect was 10th May 1966 and was changed to 23rd May 1966. Under these circumstances it is urged for the II Party that the entire matter was done *bona fide* and the notice issued on 5th May 1966 would satisfy the requirement of Standing Order No. 12 (i) and even otherwise all that the employee could contend is that she is entitled to be paid one month's wages in lieu of notice.

9. In the circumstances present in the case I am of the opinion that the termination of the services of the I Party workers

could have been effected by satisfying the requirements of standing Order 12 (i) and the question to be considered is whether they have been satisfied. The I Party workers were temporary employees and Standing Order 12 prescribes two different periods of notice or wages in lieu of notice according to the duration of service of the employees. The action having been taken entirely in the light of the standing order and not as a punitive measure, I am of the opinion, that the mere citation of Standing Order 12 (ii) in the notice of termination, which was inappropriate, is not a matter of substances so as to invalidate the termination of service. The notice of termination should be construed as being effective under Standing Order 12 (i).

9. It is however urged by Sri Subba Rao that as the notice does not purport to be under Standing Order 12 (i) at least the payment of wages of one month in lieu of notice should have been made and this was a condition precedent and therefore the requirement of that Standing Order is not fulfilled. He has cited certain decisions dealing with the requirement under Section 25F of the Industrial Disputes Act, 1964-I LLJ 333 (S.C) ; 1960 1 LLJ 25F (S.C) and submitted that the same principle should apply when construing Standing Order 12 (i). The wording of Section 25F is quite different and clearly implies that the payment or compensation is a condition precedent for retrenchment. The same principle would not apply to an action coming under Standing Order 12 (i). The effect of Standing Order 12 (i) is that in the case of termination of the services of a temporary employee who has put in service exceeding 12 months, the employee would become entitled to claim wages of one month in lieu of the notice and not that the payment of wages is a condition precedent to such terminationor that the termationin is ineffeceive until payment. During the course of her evidence, Lakshmi stated that during the conciliation proceedings the Management offered to pay a month's wages in lieu of notice and prior to that day had not made such an offer. The evidence on the side of the II Party is that money order was sent to her and also Muniyamma in October 1966. The conciliation proceedings appear to have been taken on hand pursuant to a letter addressed on behalf of the workers dated 14th July 1966 to the Assistant Labour Commissioner. The Conciliation Officer asked the Management to give their comments by his letter dated 16/19th August 1966. In their reply (Ex.W.3) dated 25th August 1966, it is true that there was no offer to pay wages in lieu of notice. It appears from the report of the conciliation officerd (Ex. W.2) to the Government that the dispute was entertained

in conciliation on 17th November 1966 and came to be postponed to later dates. It is therefore seen that even before the discussions took place first on 17th November 1966, the money orders had been sent. It appears to be apparent that the failure to offer to pay wages in lieu of notice earlier was due to the fact it had been overlooked that the workers service had exceeded 12 months at the time the termination order was issued and it was realised subsequently. It is also significaut that the money orders when sent were not received by the workers and even during the conciliation proceedings, the offer was not accepted. The failure to make an offer earlier cannot in the circumstances be made a grievance.

10. The contention urged for the II Party that the notice dated 5th May 1966 itself satisfies the requirement of a month's notice under Standing Order 12 (i) does not appear to b ı acceptable. It does not purport to be under that Standing Order and in fact refers to a possible termination of services under the Standing Orders. The eventual termination is not also in pursuance of that notice. I may notice one further argument advanced on behalf of the II Party that Standing Order 12 (i) applies to cases where no specific period of employment is specified and in the case on hand, the period of employment was stipulated upto 5th June 1966 in terms of Ex. M. 7 and M. 3 and therefore Standing Order 12 (i) is not attracted. Standing Order 12 (i) does not refer to any specified period of emloyment and the contention is opposed to the stand taken all along that the services came to be terminated at the close of 23rd May 1966. This was a case of automatic termination of service at the expiry of the period of employment on 5th June 1966. I am therefore unable to accept this contention. Having regard to all the circumstances of the case, I hold that the termination of the services of the workers is under Standing Order 12 (i) and by the tender of the amount of wages of one month in lieu of notice the obligation prescribed thereunder is fulfilled and the termination is to be upheld.

11. Having regard to the conclusions arrived at by me that the termination of service was not by way of punishment and the action taken is in accordance with the standing Order 12 (i) and it is to be upheld, the question of *mala fides* or colourable exercise of the power to terminate, would not really arise. But as it has been streneously contended that the auction was actuated by *mala fides*, I shall consider the same. In the claim statement, apart from saying that the action is *mala fide* and arbitrary, there is no specific averment indicating the action to be *mala fide*. During the course of her evidence Lakshmi stated that "possibly with a

view to to engage the others our services were terminated ". This is merely a conjecture. However, a suggestion was made to Veeraraghavan (M W.2) that with a view to bring in some persons in whom he was interested he got the services of these persons terminated. He denied this suggestion. There is no meterial on record to show that he was interested in any person who was subsequently employed in that section. Certain answers were elicited from him in regard to the remarks made by him in the randum check book for defects maintained in the Ware House which has been marked as Ex. M. 12. With reference to the number of defects noticed in the work of other persons, it was elicited that he had made no remark or given any warning to them. He has deposed that he used to visit the section about 3 days in a week and check the pieces at a randum. He has also stated that the warning to be given or recording of the warning would depend on several aspects ; namely on the backgrounnd information he had about the work of an individual and if the work had been satisfactory normally a lapse on a particular day would not result in a warning being recorded. It is seen that Ex. M. 12 is only a book maintained to a randum check. It is not a record of the entire work turned out by the workers on all the days. It is seen that the supervisor used to bring to his notice certain defects noticed by him and thereafter he would in particular make a check of the work of the workers so reported. His evidence that he would be visiting the section frequently and chceking up the work of all the workers is entitled to be accepted. The book Ex. M. 12 records specific instances of warning given to the two workers concerned in the case as also some others. The entries in the book give corroboration to the oral evidence given by Veeraraghavan. In a case of this kind when the Management had to come to a decision about the temporary workers who could be made permanent, on the parti-cular work having been decided to be taken on permanently, and certain action was taken against a few of the workers, it would be unreasonable to call upon the management to demonstrate before this court that the work was unsatisfactory by evidence other than such as has been produced in the case. The court has only to see whether the management was *bona fide* in coming to a conclusion that the work was not satisfactory so as to take the workers permanently and the decision to discharge them was not for any colourable purpose or with oblique motive. The opinion expressed by Sri. Veeraraghavan, the Ware House Master whose duty was to report about the nature of the work and who it is admitted was checking up the work and in fact was asking all the workers to do

better work and also pointing out their defects cannot be said to be unjustified or made with any oblique motive or out of any prejudice against two workers. It is also seen that apart from the two aggrieved workers the services of four others were terminated in similar circumstances.

12. It is urged by Mr. Subba Rao that Veeraraghavan confirmed his opinion after he came back from leave without even checking up the nature of work of the two workers subsequent to his original report (Ex. M. 13). No such question that he did not check up before he confirmed his original opinion was put to the witness. Therefore the argument is based on an assumption for which there is no basis.

13. It was contended that the very fact that the termination notices purported to be under Standing Order 12 (ii) and there was no offer of payment of wages in lieu of notice, soon after the order of termination just fies an inference of *mala fides*. It is also urged that the supervisor who used to check up the work of the workers has not been examined and his evidence has not been made available to prove the unsatisfactory nature of the work of the two workers and thereby there was want of satisfactory proof of misconduct and that would justify an inference of *mala fides*. Having regard to the circumstances attending the discharge of the workers, I am unable to accept the contention that the failure to make an offer in regard to the wages in lieu of notice, immediately after the termination justifies an inference of *mala fides*. The termination of service was not on account of any misconduct and therefore the argument based on "want of satisfactory proof" of misconduct must also fail. In the circumstances of the case the non-examination of the supervisor is of no material consequence especially in view of the evidence of Veeraraghavan and also that of Narayana Rao who obtained confirmation from Veeraraghavan, about the suitability of the workers for permanent employment.

14. The termination of employment being one not for any misconduct or punitive in nature the question of want of an enquiry in regard to misconduct or notice being given to the worker to answer a charge of misconduct do not arise at all in the case on hand and the absence of such enquiry cannot be taken as a ground to come to a conclusion about *mala fides*. Having regard to the circumstances I hold that the termination of the services of the two workers was not *mala fides* or a colourable exercise of the right given under Standing Orders in regard to Issue No. 1.

15. In the result I hold that the management was justified in terminating the services of the two aggrieved workers with effect from 23rd May 1966. Consequently they are not entitled to reinstatement or back wages. It is however seen, that Lakshmi, one of the aggrieved workers was entitled to be paid one month's wages in lieu of notice. This amount she has not received though it had been sent to her by M. O. So far as Muniyamma is concerned she has acknowledged the receipt of the amount subsequently. In these circumstances only Lakshmi is entitled to the relief of payment of one month's wages in lieu of notice namely Rs. 155-61 and I direct that the second party shall pay that amount to her. Parties shall bear their own costs.

M. K. SRINIVASA IYENGAR.
Presiding Officer,
Labour Court, Bangalore

"COPY,,

M. K. Srinivasa Iyengar,
Presiding Officer,
Labour Court Bangalore.

ORDER

Bangalore, dated 17th July 1968.

S. O. 1587.—WHEREAS by State Government Order No. LMA 370 LLD 67, dated 20th June 1967 the Industrial Dispute between the Workmen and the Management of M/s. Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore-2 was referred to the Labour Court, Bangalore for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 370 LLD 67.]

By Order and in the name of the Governor of Mysore,

783 G. G. PUROHIT, *Under Secy.*